



Signed: November 18, 2010

EDWARD D. JELLEN
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re

Case No. 10-40297 EDJ
Chapter 11

DOYLE D. HEATON AND
MARY K. HEATON,

Debtors./

REGAL FINANCIAL BANK,

Adv. No. 10-04085 AJ

Plaintiff,

vs.

DOYLE D. HEATON AND
MARY K. HEATON,

Defendant./

DECISION: CROSS-MOTION FOR LEAVE TO AMEND COMPLAINT

Regal Financial Bank, plaintiff herein, ("Regal") filed its complaint under Bankruptcy Code § 523(a)(2) and (a)(6) (the "Original Complaint") against Doyle Heaton ("Heaton"), debtor, on April 9, 2010, the deadline to file a complaint to determine the dischargeability of certain debts in the Heaton bankruptcy case.

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1 Regal now seeks leave of this court to amend its complaint.
2 For the reasons hereinafter discussed, the court will deny Regal's
3 motion.

4 I. Background

5 Regal's claim arises from its issuance of a loan in March,
6 2008, to Antinori Development LLC ("Antinori"), an entity of which
7 Heaton was a member. Heaton signed a personal guaranty on March 5,
8 2008, by which he guaranteed the entire loan amount. Regal renewed
9 the loan at the request of Antinori in March of 2009, prior to the
10 loan maturity date, on the condition that Heaton execute a new
11 guaranty. Heaton executed a new guaranty in May of 2009. On July
12 27, 2009, Regal issued its default letter on all members of
13 Antinori. On January 11, 2010, Heaton filed a petition under
14 Chapter 11 of the Bankruptcy Code.

15 By the Original Complaint, Regal seeks a nondischargability
16 determination under Bankruptcy Code §§ 523(a)(2)(A), (a)(2)(B), and
17 (a)(6), based on the guaranty Heaton executed in 2009 in support of
18 the renewal loan. The guaranty stated that no material adverse
19 change had occurred in Heaton's financial condition since the most
20 recent financial statement provided to Regal. But, Regal contends
21 in the Original Complaint, the financial statements Heaton provided
22 do not disclose that Heaton was also the guarantor on several other
23 loans. The Original Complaint contends the omission was intentional
24 and material, and that Regal relied on Heaton's misrepresented
25 financial condition, by way of the 2009 guaranty, when it renewed
26 the Antinori loan.

1 Regal concedes that the evidence does not support its claims.
2 See Regal Opposition to Summary Judgment at 2. The court
3 accordingly granted Heaton's motion for summary judgment as to
4 Regal's April 9, 2010 complaint. However, Regal has moved to amend
5 the Original Complaint to allege that the financial statements
6 Heaton provided prior to executing the initial guaranty in 2008
7 contained fraudulent omissions upon which Regal relied in issuing
8 the 2008 loan.

9 II. Discussion

10 Federal Rule of Civil Procedure 15, applicable herein via
11 Federal Rule of Bankruptcy Procedure 7015, provides that "a party
12 may amend its pleading only with the opposing party's written
13 consent or the court's leave. The court should freely give leave
14 when justice so requires." Fed. R. Civ. P. 15(a)(2). The Supreme
15 Court has held that motions to amend the complaint should generally
16 be granted absent "any apparent or declared reason" such as undue
17 delay, bad faith, prejudice to the opposing party, or futility of
18 the amendment. See Foman v. Davis, 371 U.S. 178, 182 (1962). See
19 also Moore v. Kayport Package Exp., Inc., 885 F.2d 531, 538 (9th
20 Cir. 1989), DCD Programs, Ltd. v. Leighton, 833 F.2d 183, 186 (9th
21 Cir. 1987). Despite the liberality with which motions to amend
22 complaints are generally granted (see DCD Programs, Ltd. v.
23 Leighton, 833 F.2d at 183) if the complaint as amended is
24 nonetheless deficient, the court must deny Regal's motion to amend.

25 Federal Rule of Bankruptcy Procedure 4007(c) provides that a
26 complaint to determine the dischargeability of a debt, such as the

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1 complaint herein, must be filed no later than sixty days after the
2 first date set for the meeting of creditors. In this case, that
3 date was April 9, 2010. Regal filed its complaint on the April 9,
4 2010 deadline. Therefore, in order for the proposed amended
5 complaint to be timely under Bankruptcy Rule 4007(c), it must relate
6 back to the date the original complaint was filed.

7 Rule 15(c) provides that "an amendment to a pleading relates
8 back to the date of the original pleading when . . . the amendment
9 asserts a claim or defense that arose out of the conduct,
10 transaction, or occurrence set out – or attempted to be set out – in
11 the original pleading." Fed. R. Civ. P. 15(c)(1)(B). Here, the
12 transaction identified by the Original Complaint is the 2009
13 guaranty Heaton signed in support of the renewal loan issued by
14 Regal to Antinori, that Regal argues incorporated misrepresentations
15 Heaton made in financial statements dated in 2008. Regal seeks to
16 amend its complaint to allege fraudulent omissions in the financial
17 documents dated December 31, 2006 provided by Heaton in support of
18 the original loan as the transaction that supports Regal's
19 § 523(a)(2)(B) nondischargeability claim. See [Proposed] First
20 Amended Complaint at 2-4.

21 In its supplemental brief¹ Regal argues that because the
22

23 ¹ The court notes that Heaton filed an objection to Regal's
24 supplemental brief, and requested this court not consider it.
25 Because the supplemental brief does not change the outcome of the
26 motion at issue herein, the court declines to sustain Heaton's
objection.

1 Antinori loan was given one identifying number upon its issuance in
2 2008, and retained that same identifying number when it was renewed
3 in 2009, it is a single loan and therefore satisfies the same
4 transaction requirement of Rule 15(c). But, the manner in which
5 Regal identified the loan, and whether or not the 2009 loan renewal
6 is a separate loan from the 2008 loan, are not the relevant
7 inquiries here. In order for Regal's proposed amended complaint
8 (the "Proposed Complaint") to satisfy Rule 15(c) the court simply
9 looks to whether the Proposed Amended Complaint is based upon the
10 same set of facts alleged by the Original Complaint to give rise to
11 Regal's cause of action. A careful review of the Original Complaint
12 and the Proposed Complaint reveal that this is not so here.

13 The Original Complaint does mention the 2008 guaranty Heaton
14 executed in support of the 2008 loan. See Complaint at 2-5.
15 However there is no mention of the 2006 financial statements
16 anywhere in the Original Complaint. The Original Complaint
17 identifies Heaton's failure to disclose that his financial condition
18 had "materially deteriorated" between the 2008 loan issuance date
19 and the 2009 renewal as the source of its claim.

20 By contrast, the Proposed Complaint states only one claim for
21 relief, based entirely upon alleged fraud in the 2006 financial
22 statements provided by Heaton in support of the 2008 loan. See
23 [Proposed] First Amended Complaint at 5. Regal now seeks to allege
24 that it "would not have closed the Loan if it had been fully
25 appraised of Heaton's true financial position as of December 31,
26 2006." Id. at 4.

1 The court finds that the Proposed Complaint does not assert a
2 claim that, "arose out of the conduct, transaction, or occurrence
3 set out – or attempted to be set out – in the original pleading."
4 Fed. R. Civ. P. 15(c). The Supreme Court has explained that, "[t]he
5 rationale of Rule 15(c) is that a party who has been notified of
6 litigation concerning a particular occurrence has been given all the
7 notice that statutes of limitations were intended to provide."
8 Baldwin County Welcome Ctr. v. Brown, 66 U.S. 147, 149 n.3 (1984).
9 In this case, there is nothing in the Original Complaint to put
10 Heaton on notice of the transaction that is the subject of the sole
11 count of the Proposed Complaint.² Accordingly, the Proposed
12 Complaint does not relate back to the Original Complaint for the
13 purposes of satisfying the April 9, 2010 deadline to file a
14 complaint to determine the dischargeability of certain debts in
15 Heaton's bankruptcy case.

16 Having concluded that the Proposed Complaint does not relate
17 back to the Original Complaint under Federal Rule of Civil Procedure
18 15(c), the court returns to Regal's motion to amend its complaint
19 under Federal Rule of Civil Procedure 15(a). The Ninth Circuit has
20 held that leave to amend may not be given if the complaint, as

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22 ²The court also notes that a complaint alleging fraud is
23 subject to the heightened pleading requirement of Federal Rule of
24 Civil Procedure 9(b), applicable herein via Federal Rule of
25 Bankruptcy Procedure 7009. It is therefore appropriate in this
26 case to find that the merely incidental relationship between the
transaction giving rise to the Original Complaint and that giving
rise to the Proposed Complaint is not sufficient to satisfy Rule
15(c).

1 amended, is subject to dismissal. See Moore v. Kayport Package
2 Exp., Inc., 885 F.2d at 538. If Regal were permitted to amend its
3 complaint it would be subject to dismissal as in violation of the
4 statue of limitations for filing a complaint to object to discharge
5 of debt (see Fed. R. Bankr. P. 4007(c)) because the Proposed
6 Complaint does not relate back to the Original Complaint within the
7 meaning of Federal Rule of Civil Procedure 15(c). The court
8 therefore holds that amendment of the complaint is futile, and leave
9 to amend is not appropriate. See Foman v. Davis, 371 U.S. at 182.

10 III. Conclusion

11 Regal's Proposed Complaint does not state a claim that arises
12 out of the same transaction set out in the Original Complaint. The
13 Proposed Complaint therefore does not relate back to the Original
14 Complaint within the meaning of Federal Rule of Civil Procedure
15 15(c)(1)(B) and is subject to dismissal as violative of the statute
16 of limitations set out in Federal Rule of Bankruptcy Procedure
17 4007(c). Leave to amend is therefore futile, and impermissible
18 under Federal Rule of Civil Procedure 15(a)(2).

19 The Cross-Motion for Leave to Amend Complaint is therefore
20 DENIED. The court will issue its order accordingly.

21 **END OF DECISION**
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COURT SERVICE LIST

Stephen M. Judson
Fitzgerald, Abbott and Beardsley
P.O. Box 12867
Oakland, CA 94604-2867

Saied Kashani
800 West First Street
Suite 400
Los Angeles, CA 90012

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